

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814**

**File No: RH 05047901  
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**INITIAL STATEMENT OF REASONS**

**HEALTH CARE LANGUAGE ASSISTANCE PROGRAM**

***INTRODUCTION***

California Insurance Commissioner John Garamendi (the “Commissioner”) proposes to add Article 12.1, sections 2538.1 through 2538.8 entitled “Health Care Language Assistance Program” to the California Code of Regulations, Title 10, Chapter 5, Subchapter 3. The proposed regulations set forth the methodology for health insurers to develop and implement a Language Assistance Program for the provision of translation and interpreting services to their insureds.

***SPECIFIC PURPOSE AND REASONABLE NECESSITY***

Sections 2538.1 and 2538.2 describe the authority and purpose of these regulations and provide definitions for the most frequently used words. Section 2538.3 describes the Language Assistance Program that health insurers shall develop and implement by a date certain. Section 2538.4 explains in detail how the health insurer shall conduct the survey of language preferences and assessment of linguistic needs of their insureds. Section 2538.5 describes the specific documents that shall be translated by health insurers, the benchmarks for identifying the indicated/threshold languages into which the specified English documents shall be translated, and the health insurer’s requirements for monitoring and quality assurance of these services to insureds. Section 2538.6 defines oral interpretation services, establishes the requirements for using family, friends and minors as interpreters, and defines health insurer’s requirements for monitoring and quality assurance of these services to insureds. Section 2538.7 provides detailed direction to health insurers regarding the monitoring and evaluation of the Language Assistance Program and specific reporting requirements to the Department of Insurance. Section 2538.8 describes the Department of Insurance reporting responsibilities to the Legislature and provides detail regarding the Insurance Commissioner’s monitoring and quality assurance responsibilities to health insurers as well as his authority to assess fees and penalties for late or non-reporting.

These sections are reasonably necessary to provide insurers with clear, detailed information and instructions regarding the development and implementation of a Language Assistance Program, their monitoring and evaluation responsibilities, and the Insurance Commissioner’s authority to assess and evaluate their performance and impose fines and penalties. The specific purpose of each regulation and the rationale for the Insurance Commissioner’s determination that each

regulation is reasonably necessary to carry out the purpose for which it is proposed are set forth below. Implementation of these regulations is necessary for the efficient administration and enforcement of the Code.

#### **§2538.1 AUTHORITY AND PURPOSE**

This section sets forth the authority under which these regulations are promulgated. It specifies the purpose of the regulations to establish standards and requirements to provide insureds, free of charge, with appropriate access to translated materials and oral interpretation services in obtaining covered benefits, to describe the methods of surveying the language preferences and linguistic needs of insureds, to prescribe the requirements, standards and quality assurance for translation of vital documents and individual access to oral interpretation services, and to define the reporting and data collection requirements for health insurers and reporting requirements for the Department of Insurance. This section specifies that the regulations apply to all individual and group policies of health insurance and to all health insurers as defined in Insurance Code section 106. This section is reasonably necessary to inform affected persons and insurers of the scope and application of the regulations.

#### **§2538.2 DEFINITIONS**

This section provides definitions to words and terms used throughout the regulations. Although many of the words and terms defined have a generally understood meaning in the insurance industry, definitions of certain words and terms are included to avoid any ambiguity or uncertainty in the application of the regulations. Certain of the definitions are used to encompass concepts that may not be readily apparent from the word or term used. These definitions are discussed below. These definitions are reasonably necessary to inform affected persons of the specific applicability and specific meaning of various requirements.

“Demographic profile” is defined in this section as including information about the primary/preferred spoken and written language of insureds, their race and ethnicity. The definition is reasonably necessary to clarify the specific information required to be obtained about each insured and make specific Insurance Code Section 10133.8 (b)(2).

“Health insurer” is defined in this section to include all insurers identified in Insurance Code section 106. This definition is reasonably necessary because “health insurer” is not a term with a readily apparent meaning in the Insurance Code.

“Multiple languages” is defined as the languages identified by the California Secretary of State for translation of voting/ballot documents pursuant to the Voting Rights Act. This definition is reasonably necessary to clarify for health insurers the method of determining the exact number and type of languages to which certain documents shall be translated.

“Vital documents” describes the specific documents that must be translated into the indicated/threshold languages by health insurers. This definition is reasonably necessary to

inform health insurers as to the specific documents that shall be translated into indicated/threshold languages.

### **§2538.3 LANGUAGE ASSISTANCE PROGRAM**

This section establishes the timeframe in which health insurers shall develop and implement a Language Assistance Program. It also prescribes the contents of the written policies and procedures which health insurers shall develop. This section also describes the requirements of the written notice to insureds about the availability of language assistance services and the duties of health insurers related to distribution of the notice and filing requirements with the Department. This section states the requirements to ensure compliance by contractors/health care providers with the language assistance program developed by the health insurer. This section is reasonably necessary to notify health insurers of the requirements of the Language Assistance Program they are required to develop and implement by Insurance Code section 10133.8.

### **§2538.4 NEEDS ASSESSMENT OF INSURED POPULATION**

This section provides health insurers with the timelines for surveying the language preferences and assessing the linguistic needs of their insureds and updating the information on a regular basis. It also provides health insurers with details regarding the allowable survey methods, translation requirements for the survey materials, and requirements for information to be included in the health insurer's Language Assistance Program plan. This section is reasonably necessary to interpret and clarify for health insurers the requirements of the needs assessment of the insured population.

### **§2538.5 WRITTEN TRANSLATION OF VITAL DOCUMENTS**

This section states the requirements that health insurers shall follow for the translation of vital documents. It defines the methodology to be followed to determine into which languages vital documents shall be translated. It also identifies the documents that may not need to be translated and specifies the procedures for health insurers to use when an insured requests a written translation of those documents. This section states the phase-in requirements for translation of vital documents for health insurers. It also provides notice to health insurers of their responsibility to develop policies and procedures to ensure the quality and accuracy of the written translation. This section is reasonably necessary to notify health insurers of the specific requirements to provide translation of vital documents for insureds.

### **§2538.6 INDIVIDUAL ACCESS TO ORAL INTERPRETATION SERVICES**

This section interprets, clarifies and makes specific Insurance Code section 10133.8 (b)(5) which requires health insurers to provide individual access to interpretation services. This section defines when and where interpretation services shall be provided, what "timely" provision of interpretation services means, and states the specific elements that shall be included in the policies and procedures. This section also details the use of family, friends, and minors as interpreters. It provides notice to health insurers of their responsibility to develop policies and procedures to ensure the quality and timeliness of oral interpretation services. This section is

reasonably necessary to notify health insurers of the specific requirements to provide oral interpretation services to insureds.

#### **§2538.7 HEALTH INSURER MONITORING, EVALUATION & REPORTING**

This section describes in detail the monitoring, evaluation and reporting responsibilities of health insurers in relation to their Language Assistance Program. It states the requirements for assessing the effectiveness of the Program. This section also provides notice to health insurers of their responsibility to report to the Department within one year after the initial assessment on the implementation of the Program. It also notifies insurers that fines and penalties will be assessed for non-timely reporting. This section is reasonably necessary to clearly inform health insurers of their monitoring, evaluation and reporting requirements for the Language Assistance Program and the applicable fines and penalties.

#### **§2538.8 DEPARTMENT OF INSURANCE REPORTING**

This section provides the Department with the specifics of the reporting requirements to the Legislature on health insurer compliance with these regulations. It also states the timeframe for reporting. This section notifies the Department of the responsibility to review the information reported by health insurers regarding their Language Assistance Program and use the information to make recommendations to health insurers for changes in their Program. This section is reasonably necessary to inform the Department of the reporting deadlines and responsibilities for the implementation of the Language Assistance Program by health insurers.

#### ***ECONOMIC IMPACT ON SMALL BUSINESS***

The Commissioner has determined that the proposed regulation may affect small business to the extent a contractor/health care provider may qualify as a small business. Pursuant to Government Code section 11342.610, subdivision (b), paragraph (2), health insurers are not small businesses. The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business.

#### ***IDENTIFICATION OF STUDIES, REPORTS, DOCUMENTS***

The Department considered the following studies, reports and documents:

- Dept. Health & Human Services, Office of Civil Rights Policy Guidance (65 Federal Register 52762).
- Joint Commission on Accreditation of Healthcare Organizations, Standards Supporting the Provision of Culturally and Linguistically Appropriate Services (2006).
- Nat. Council on Interpreting in Health Care, National Standards of Practice for Interpreters in Health Care (2005).
- Office of Minority Health, Culturally and Linguistically Appropriate Services in Health Care (2006).

- The California Endowment, California Standards for Healthcare Interpreters, Third Printing (2002).
- The California Endowment, Cal County Profiles: Limited English Proficient Population (2006)

### ***SPECIFIC TECHNOLOGIES OR EQUIPMENT***

Adoption of these regulations would not mandate the use of specific technologies or equipment.

### ***REASONABLE ALTERNATIVES***

The Commissioner has determined that no reasonable alternative exists to carry out the purposes for which the regulations are proposed. Through meetings with stakeholders and consideration of the documents listed above, many different alternative texts to this regulation were presented to and/or considered by the Department. The Department will continue to consider information and data collected from health insurers' implementation of their language assistance program in order to file its required biennial reports to the Legislature as well as to make recommendations for changes that further enhance the standards developed under this regulation.

### ***PRENOTICE PUBLIC DISCUSSIONS***

The Commissioner conducted several pre-notice public discussions pursuant to Government Code §11346.45. The first pre-notice public discussion was a video conference/live meeting on April 4, 2006 attended by approximately 40 people representing 21 health insurers, 13 consumer health advocacy groups and a number of associations. Subsequent to that "kick-off" meeting, staff held 5 conference calls with various stakeholder groups to identify their key issues and discuss their solutions. Several stakeholders submitted their comments from the Department of Managed Health Care regulatory process to Commissioner's staff and several other stakeholders submitted proposed regulations to staff in draft form. Input obtained in connection with these meetings and conference calls was considered in formulating the proposed regulations.